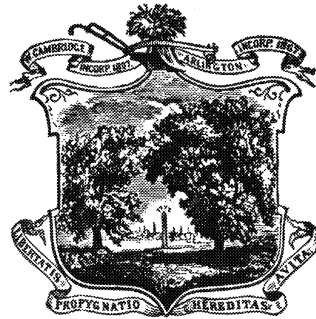


**TOWN OF ARLINGTON  
MASSACHUSETTS**

**REPORT OF THE  
BOARD OF SELECTMEN**



**TO THE  
ANNUAL TOWN MEETING  
MONDAY, APRIL 27, 2009**

**8:00 P.M.**



registered and is entitled to go from place to place within the Town for the purpose specified.

The Chief of Police may, however, authorize the director of any religious organization within the Town to solicit such contributions, etc., without having each solicitor under his direction registered.

And replace it with:

**Section 4. Door-to-Door Solicitors**

**A. Definitions; applicability**

(1) As used in this section, the terms “solicit” and “canvass” shall mean and include any one or more of the following activities conducted at residences without the previous consent of the owner:

(a) Seeking to obtain the purchase, or orders for the purchase, of goods, wares, merchandise, foodstuffs, or services of any kind, character, or description whatsoever for any consideration whatsoever; or

(b) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers, and every other type or kind of publication.

(2) The provisions of this section shall not apply to officers or employees of the Town, county, state, or federal government, or any subdivision thereof when on official business, or to neighborhood youth and students who solicit for the shoveling of snow or cutting of lawns or similar services to residents, nor shall it be construed to prevent route salespersons or other persons having established customers to whom they make periodic deliveries from calling upon such customers.

(3) If any solicitor or canvasser is under the age of 18 years and is selling goods or periodicals for a commercial purpose, the provisions of M.G.L. c. 101, § 34, shall apply.

(4) The provisions of this section shall not apply to any person soliciting solely for religious, charitable, or political purposes.

**B. Registration required**

It shall be unlawful for any person to solicit or canvass or engage in or conduct business as a canvasser or solicitor without first having obtained a certificate of registration from the Chief of Police as provided in this section.

**C. Application for certificate of registration**

**(1) Application for a certificate of registration shall be made upon a form provided by the Police Department along with a nonrefundable application fee of \$25.**

**(2) An authorized representative of the sponsoring organization shall apply to the Chief of Police or his/her designee either in person or by mail. All statements made on the application or in connection therewith shall be made under the pains and penalties of perjury. The applicant shall provide all information requested on the application, including:**

**(a) Name, address and telephone number of the sponsoring organization, along with a listing of all officers and directors;**

**(b) State and/or federal tax identification number of the sponsoring organization;**

**(c) Name, residential and business address, length of residence at such residential address, telephone number, social security number, and date of birth of each representative of the sponsoring organization who will be soliciting or canvassing in the Town,**

**(d) Description sufficient for identification of the subject matter of the soliciting or canvassing in which the organization will engage;**

**(e) Period of time for which the certificate is applied (every certificate shall expire one year from date of issue);**

**(f) The date of the most recent previous application for a certificate under this section;**

**(g) Any previous revocation of a certificate of registration issued to the organization or to any officer, director, or representative of the organization by any city or town and the reasons therefor;**

**(h) Any convictions for a felony, either state or federal, within five years of the application, by the sponsoring organization, any of its officers or directors, or any representative who will be soliciting or canvassing in the Town;**

**(i) Names of the three communities where the organization has solicited or canvassed most recently;**

**(j) Proposed dates, hours, and method of operation in the Town;**

**(k) Signature of authorized representative of the sponsoring organization.**

**(3) A photograph of each representative of the sponsoring organization who will be soliciting or canvassing in the Town shall be attached to the application.**

**(4) No certificate of registration shall be issued to any person or to any organization having an officer or director who was convicted of commission of a felony, either state or federal, within five years of the date of the application, nor to any organization or person whose certificate of registration has previously been revoked as provided below.**

**(5) Fully completed applications for certificates shall be acted upon within five business days of receipt. The Chief of Police shall cause to be kept accurate records of every application received together with all other information and data pertinent thereto and of all certificates of registration issued under this section and of all denials.**

**(6) Upon approval of an application, each solicitor or canvasser shall be issued a certificate of registration to carry upon his/her person at all times while soliciting or canvassing in the Town and to display the certificate whenever asked by any police officer or any person solicited.**

#### **D. Revocation of certificate.**

**(1) Any certificate of registration issued hereunder may be revoked by the Chief of Police for good cause, including violation of any of the provisions of this section or a false statement in the application. Immediately upon such revocation, the Chief of Police shall give written notice to the holder of the certificate in person or by certified mail addressed to his/her residence address set forth in the application.**

**(2) Immediately upon the giving of such notice, the certificate of registration shall become null and void. In any event, every certificate of registration shall state its expiration date, which shall be one year from date of issue.**

#### **E. Deceptive practices**

**No solicitor or canvasser may use any plan, scheme, or ruse to misrepresent the true status or mission of any person conducting the solicitation or canvas in order to gain admission to the home, office, or other establishment of any person in the Town.**

#### **F. Duties of solicitors and canvassers**

**(1) It shall be the duty of every solicitor and canvasser going onto any premises in the Town to first examine whether there is a notice posted stating that no solicitors are welcome. If such notice is present, then the solicitor or canvasser shall immediately and peacefully depart from the premises.**

**(2) Any solicitor or canvasser who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.**

**G. Lawful hours to solicit or canvass**

**All canvassing or soliciting under this section shall be confined to the hours between 10:00 a.m. and 8:00 p.m. throughout the year.**

**H. Penalty for violations**

**Violation by a solicitor or canvasser of any provision of this section shall be punishable by a fine of not more than three hundred dollars but violation of M.G.L. c. 101, § 34, shall be punishable by a fine of not more than five hundred dollars or imprisonment of not more than six months, as provided therein.**

**(5-0)**

**COMMENT:** Every spring and summer, Arlington experiences the arrival of several commercial organizations conducting door-to-door solicitation. Currently, there is no meaningful way to keep track of these organizations while they are here. The Town’s existing Bylaw concerning such solicitation is vague in its application and of dubious constitutional validity following the United States Supreme Court’s seminal decision in the 2002 case of Watchtower Bible and Tract Society v. Village of Stratton. The Police Department has requested a Bylaw that is enforceable and workable for prevention and investigation of crime and consumer fraud, as well as mitigation of citizen fear and annoyance associated with the annual influx of door-to-door solicitors. The proposed amendment to Title VIII, article 1, of the Town Bylaws is drafted to comply with the strict constitutional requirements in this area of the law. It is modeled on a 2004 Town of Wakefield bylaw that has been approved by the Attorney General. The bylaw would exempt charitable, religious, and political canvassers. The registration requirements of the proposed bylaw are not unduly burdensome to door-to-door solicitors and the commercial organizations for which they work, but would provide law enforcement with specific and current information about solicitation taking place in Arlington that would be a valuable tool in preventing criminal and fraudulent activity. For these reasons, the Board recommends favorable action under this article.

**ARTICLE 14**

**BYLAW AMENDMENT/MOBILE FOOD VENDORS**

**VOTED:** That the Town Bylaws be and hereby are amended by adding to the end of Title VIII (“Public Health and Safety”), the following article:

**ARTICLE 6**

**MOBILE FOOD VENDORS**

**Definitions.** “Mobile food vendor,” a mobile operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption either on or off premises, regardless of whether there is a charge for the food.

**Permits.** No one may operate as a Mobile Food Vendor within the Town without a permit from the Arlington Board of Health. Any person applying for a permit must be duly licensed to operate a motor vehicle in the Commonwealth of Massachusetts or duly licensed in the state in which they reside. The operator of the vehicle must provide a valid State Hawker's license issued by the Commonwealth of Massachusetts before a Permit to Operate a Mobile Food Vehicle will be issued.

**Vehicles.** Mobile food vendor operations shall have identification, such as person's name and/or business name, city and telephone number in letters not smaller than three inches, on the left and right door panels of the vehicle or on the left and right sides of the trailer. Any hawker who sells frozen desserts from a motor vehicle must equip said vehicle with a flashing amber dome light and front and rear warning lights which shall flash alternatively and which shall be kept flashing when such vehicle is stopped for the purpose of selling frozen desserts, in accordance with Chapter 101, section 16A, of the Massachusetts General Laws.

**Operation.** Mobile Food Vendors operating within the Town may not:

- (1) stand in one place in any public place or street for more than ten minutes unless actively vending;
- (2) vend within 500 feet of any school between the hours of 8:00AM and 4:00PM on school days during the school year;
- (3) stop or remain on any crosswalk;
- (4) park or remain within fifteen feet of any intersection;
- (5) vend in the parking lot of the Arlington Reservoir (bathing beach) located on Lowell Street at any time;
- (6) drive in reverse in order to make or attempt a sale; or
- (7) vend after 8:00PM or sunset, whichever is later, except for sporting events.

(5-0)

**COMMENT:** Over the past several years, the number of mobile food vendors (which includes ice-cream trucks and canteen trucks) operating in Arlington has increased from one to at least six. With this increase have come an increasing number of complaints about unsafe and disruptive behavior by these vendors. The Board supports amending the Bylaws to set forth clear expectations for safe and responsible practices by these vendors.

## **ARTICLE 15                      BYLAW AMENDMENT/DEMAND FEE UNPAID TAXES**

**VOTED:**        That Title I, Article 4, Section 2(A), of the Town Bylaws be and hereby is amended to add the following sentence at the end of numbered paragraph 2:

**When the Collector of Taxes serves a written demand for the payment of any delinquent taxes, a demand fee of \$30 shall be added to the amount of the tax demanded thereby.**

**(5-0)**

**COMMENT:** State law requires local Collectors of Taxes to charge a “demand fee” for making a written demand for an unpaid tax liability. In 2008, the Legislature amended the law to change this amount from \$5 to “not more than \$30,” leaving municipalities to fix the fee within that range. This increase reflects increased costs of all local governmental functions, including tax collection. The Board supports fixing the new demand fee at \$30 to encourage timely payment of taxes and to offset the Town’s costs of collection. This fee increase will have no effect on residents who pay their taxes on time.

**ARTICLE 16 BYLAW AMENDMENT/PUBLIC CONSUMPTION OF MARIHUANA OR TETRAHYDROCANNABINOL**

**VOTED:** That the Town Bylaws be and hereby are amended by adding to the end of Title VIII (“Public Health and Safety”), the following article:

**ARTICLE 16**

**PUBLIC CONSUMPTION OF MARIHUANA OR TETRAHYDROCANNABINOL**

**Section 1. No Public Consumption.** No person shall smoke, ingest, or otherwise use or consume marihuana or tetrahydrocannabinol (as defined in General Laws Chapter 94C, Section 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under control of the Town, or in or upon any bus or other passenger conveyance operated by a common carrier within the Town, or in any place accessible to the public within the Town.

**Section 2. Violation and Penalties.** Violation of Section 1 is punishable by a fine of up to \$300, enforceable through criminal indictment or complaint under General Laws Chapter 40, Section 21, or by non-criminal disposition under General Laws Chapter 40, Section 21D. Any penalty imposed under this Bylaw shall be in addition to any civil penalty imposed under G.L. c. 94C, § 32L.

**(5-0)**

**COMMENT:** In November 2008, the statewide electorate passed Question 2, which decriminalized possession of less than one ounce of marihuana. The new law reserved to



towns the authority to enact bylaws prohibiting public consumption of marihuana or its active ingredient, tetrahydrocannabinol (THC). The Board supports adoption of such a bylaw to prohibit use of marihuana in public places within the Town. Although possession of up to an ounce of marihuana is punishable by a civil fine of \$100 under the new law, the Board believes that the more onerous fine of \$300 for violation of this bylaw will do more to discourage public use of marihuana and preserve public health and safety within the Town.

**ARTICLE 17                      BYLAW AMENDMENT/RABIES VACCINATION CLINIC**

**VOTED:**        **That Title VIII, Article 3, of the Bylaws, be and hereby is amended by deleting Section 5, which reads as follows:**

**Section 5.       Rabies Vaccination Clinic**

**A clinic for the inoculation of dogs against rabies shall be established under the direction of the Board of Health. The Board of Health may establish a fee not exceeding five dollars (\$5.00) to cover the cost of rabic vaccine, including other materials and other related charges required for each dog inoculated.**

**in its entirety and by renumbering the existing Sections 6, 7, 8, and 9 accordingly.**

**(5-0)**

**COMMENT:** The rabies inoculation clinic created under this Bylaw was discontinued years ago for lack of funds and lack of interest. This discontinuation reflects the obsolescence of such a publicly funded clinic in a time where dog-owners routinely seek comprehensive canine care from private veterinarians, including regular rabies vaccinations, which are required under state law and local licensing provisions. The Board recommends favorable action on this article to remove the requirement that the rabies inoculation clinic be provided by the Board of Health.

**ARTICLE 18                      BYLAW AMENDMENT/ANIMAL CONTROL**

**VOTED:**        **The Board will report to Town Meeting under Article 18 of the Warrant.**

**(4-0)**

**Ms. Rowe absent**

**ARTICLE 19                      BYLAW AMENDMENT/CANINE CONTROL**

**VOTED:**        **That no action be taken under Article 19 of the Warrant.**

**(5-0)**

**COMMENT:** The proponent of this article has stated that it is not her intent to set forth a proposal competing with the Green Dog proposal under Article 18. For that reason, the Board recommends that no action be taken under this nearly identical warrant article. If Town Meeting does not take action on the Green Dog proposal that is satisfactory to the proponent of this article, she may make a substitute motion on Town Meeting floor to bring her proposal forward.

**ARTICLE 20**

**BYLAW AMENDMENT/OFF LEASH  
DOGS AT ROBBINS FARM PARK**

**VOTED:** That no action be taken under Article 20 of the Warrant. (5-0)

**COMMENT:** The Board is sensitive to the concerns raised by the proponents of this article concerning off-leash dogs at Robbins Farm. At the same time, the Board is of the view that amendments to proposals for off-leash dog areas and hours made under Articles 18 and 19 of the Warrant should be effected under one or both of those articles when they are brought before Town Meeting. Therefore, the Board recommends no action on this article.

**ARTICLE 21**

**BYLAW AMENDMENT/GATED DOG PARKS**

**VOTED:** That no action be taken under Article 21 of the Warrant. (4-0)  
Ms. Rowe absent

**COMMENT:** The Board is sensitive to the concerns raised by the proponents of this article. At the same time, the Board is of the view that amendments to proposals for off-leash dog areas and hours made under Articles 18 and 19 of the Warrant should be effected under one or both of those articles when they are brought before Town Meeting. Therefore, the Board recommends no action on this article.

**ARTICLE 22**

**BYLAW AMENDMENT/LOCATIONS FOR UNFENCED  
OFF LEASH DOG AREAS**

**VOTED:** That no action be taken under Article 22 of the Warrant. (5-0)

**COMMENT:** The Board is in general agreement with the proponent that, if there are to be unfenced spaces where dogs may be off-leash, there should be “buffer zones” between those spaces and playgrounds and private homes to prevent intrusion by unleashed dogs into those areas. The Board has, however, previously stated its view that refinements of proposals for off-leash dog areas and hours made under Articles 18 and 19 of the Warrant

are better made under one or both of those articles when they are brought before Town Meeting. Therefore, the Board recommends no action on this article.

**ARTICLE 23                    BYLAW AMENDMENT/INCREASE DOG LICENSE FEES**

**VOTED:**        **That Title VIII, Article 2, Section 4, of the Bylaws be and hereby is amended by adding to the end of that section the following sentence:**

**Failure to comply with this section within 45 days of the date that the licensing or re-licensing obligation arises shall be punishable by a fine of \$50 and failure to comply with this section within 90 days of the date that the licensing or re-licensing obligation arises shall be punishable by an additional fine of \$50,**

**and that the Finance Committee be requested to apply revenue attributable to the fines described above and any increase in dog-licensing fees adopted on or after March 15, 2009, to be applied to fund animal-control efforts.**

**(5-0)**

**COMMENT:** This article has three objectives: (1) to increase dog-license fees; (2) to impose fines for failure to comply with licensing requirements; and (3) to urge devotion of these new revenues to animal control. The Board is in agreement with all of these initiatives. First, the Board agrees with the proponent that an increase in dog-licensing fees, which have remained unchanged for several years, is appropriate to offset the costs associated with performing the dog-licensing function. The Board has been advised by Town Counsel, however, that such an increase may be implemented by the Town Clerk without an amendment to the Bylaws. Therefore, the Board has written to the Town Clerk suggesting that the fees be increased as set forth in this article. Second, the Board supports the proponent's view that the compliance with dog-licensing requirements can be improved by imposition of a fine for failing to license or re-license dogs in a timely manner. Finally, the Board agrees that increased revenue related to dog licensing should be used to enhance the Town's animal-control capacity. For these reasons, the Board recommends favorable action on this article, with the exception of the fee increases, which can be implemented by the Clerk on her own without Town Meeting action.

**ARTICLE 24                    BYLAW AMENDMENT/EXCAVATION AND TRENCH SAFETY**

**VOTED:**        **To strike Section 1 of Article 8 of Title VI of the Bylaws, Trench Safety, which provides as follows:**

**Section 1. Pursuant to the provisions of M.G.L. c. 82A, the Town hereby adopts and incorporates by reference the regulations of the Division of Occupational Safety as promulgated under 520CMR14.00 as same may be**

**from time to time amended. The Director of the Department of Public Works shall serve as the permitting authority and may promulgate additional regulations consistent with such enactments. The Town Manager shall promulgate a reasonable fee to defray the cost of the issuance and administration of said permit.**

**And replace it with:**

**Section 1. The Director of Public Works shall serve as the authority for issuing trench excavating permits pursuant to General Laws Chapter 82A and 520 C.M.R. 14.00 and may impose additional requirements concerning excavation and trench safety within the Town not inconsistent with these state enactments as they may be from time to time amended. The Director of Public Works shall set a reasonable fee to defray the cost of issuance and administration of trench excavating permits.**

**(5-0)**

**COMMENT:** This is a “housekeeping” article submitted at the request of the Town Manager. It would amend Article 8 of Title VI of the Bylaws, which was adopted by the 2008 Annual Town Meeting in accordance with General Laws Chapter 82A, which requires all cities and towns to implement permitting and other safety requirements governing the excavation of trenches. Following the 2008 Annual Town Meeting, the new Bylaw was submitted to the Attorney General for approval as required by law. Although the Attorney General approved the Bylaw, she cautioned that some of the wording in Section 1 could create confusion by blurring the division between Town authority and state authority. The Board recommends adoption of the language change proposed by this article because it would address the Attorney General’s concerns without changing the meaning or effect of the bylaw.

**ARTICLE 25                      HOME RULE LEGISLATION/SUBDIVISION CONTROL**

**VOTED:        That the Board of Selectmen be and hereby is authorized and requested to file home rule legislation to provide substantially as follows:**

**AN ACT ESTABLISHING THE ARLINGTON  
REDEVELOPMENT BOARD AS THE  
BOARD OF SURVEY IN THE TOWN OF ARLINGTON**

**SECTION 1: PREAMBLE**

**Notwithstanding any general or special law to the contrary, including, without limitation, any provision of Chapter 41 of the General Laws, including Sections 81K through Section 81GG of the subdivision control law, the provisions of Chapter 247 of the Acts of 1897 establishing a Board of Survey in the Town of Arlington, Chapter 738 of the Acts of 1971 establishing the Arlington**

Redevelopment Board for the Town of Arlington and Chapter 503 of the Acts of 1952 establishing a Town Manager Form of Government for the Town of Arlington as each has been from time to time amended, there is hereby established a Board of Survey for the Town of Arlington. The Arlington Redevelopment Board shall constitute the Board of Survey. The responsibility of such Board shall be to protect the safety, convenience and welfare of the inhabitants of the Town, in regard to the laying out and construction of private ways. The process of the Board's review will be initiated by the filing of a plan of the proposed development.

## **SECTION 2: DEFINITIONS**

The following words shall have the following meaning, unless a contrary intention clearly appears:

“Applicant” shall include an owner or his agent or representative, or his assigns.

“Board” shall mean the Arlington Redevelopment Board, acting in its capacity as the Board of Survey under this law.

“Commission” shall mean the Historic District Commission having jurisdiction over a district in which a way is proposed.

“Day” shall mean a calendar day.

“Development” shall mean the division of a tract of land into two or more lots, where such division shall require the construction of one or more ways to ensure the development's compliance with the access and/or frontage requirements of the town's zoning by-law, and provided that a deed evidencing such division has not been recorded at the registry of deeds prior to the effective date of the law.

“Lot” shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

“Notice” shall mean, for the purposes of the law, publication in a newspaper of general circulation in the Town of Arlington once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing, and posting such notice in a conspicuous place in the town hall for a period of not less than fourteen days before the day of the hearing.

“Plan” shall mean a plan of the private way or ways and the development that such ways will serve, including all utilities, drainage systems, and other site improvements, together with such elements of an application as the board may require, and submitted to the board for its approval in accordance with the provisions of the law and the board's rules and regulations.

“Registered mail” shall mean registered or certified mail.

“Registry of deeds” shall mean the Middlesex County (Southern District) Registry of Deeds, or, for registered land, the Middlesex County (Southern District) Registry District of the Land Court.

“Utility” shall mean public or private utilities serving a development, including water, sewerage, gas, and electricity.

“Way” shall mean a private way that provides access to one or more lots, the construction of which is required to ensure the compliance of a development with the access and frontage requirements of the town's zoning by-law.

### **SECTION 3: PURPOSES OF LAW**

The law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the town by regulating the laying out and construction of ways in developments, and to further other public purposes including the provision of adequate utility services and the protection of environmental resources. The Board shall require, inter alia, that such plan for the laying out of ways, utilities, drainage, and other site improvements shall be drawn with due consideration of the following factors:

- a. To mitigate congestion in such ways and adjacent private or public ways.
- b. To secure the public safety in the case of fire, flood, or other public emergencies and to ensure adequate emergency vehicle access for police, fire, and other municipal services.
- c. To ensure compliance with the zoning bylaw.
- d. To secure adequate provision for access to the town's water supply.
- e. To secure adequate provision of sanitary sewer service, utility services and street lighting.
- f. To provide for adequate curbs, sidewalks and side slopes as appropriate.
- g. To apply design standards for the grade, width, direction and location of such roadways.
- h. To ensure adequate protection of environmental resources, including open spaces, vegetation, and wildlife habitat, along with provisions for storm water management and drainage to prevent flooding and protect water quality.
- i. To advance the goals of the town's comprehensive plan, its open space plan, and any special or district plan or policy.

### **SECTION 4: RULES AND REGULATIONS**

The board is authorized and directed to adopt and from time to time thereafter to amend, after notice and a public hearing, rules and regulations in furtherance of the purposes stated in Section 3 herein. Such rules and regulations may prescribe the size, form, contents, style and number of copies of plans and the standards and procedures for the submission and approval thereof. The rules and regulations may permit the board to impose a fee in an amount calculated to pay the cost of any engineering, inspection or other services directly related to the proposed development.

A true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the board, and in the office of the town clerk. Once a plan has been submitted to the board, and written notice has been given to the town clerk and until final action has been taken thereon by the board or the time for such action has elapsed, the rules and regulations governing such plan shall be those in effect at the time of the submission of such plan.

## **SECTION 5: SUBMISSION AND REVIEW OF PLANS**

No person shall construct any way on a development unless he has first submitted to the board for its approval a plan of such ways and development and the board has approved such plan in the manner hereinafter provided. After the approval of a plan the location and configuration of ways, utilities, drainage systems, and other site improvements shown thereon shall not be changed unless the plan is amended accordingly as provided herein.

A plan shall be submitted under this section when delivered by hand to the board, with a copy to the town clerk. The clerk shall, if requested, give a written receipt therefor to the person who delivered the plan. Before approval, modification and approval, or disapproval of the plan is given, notice shall be given and a public hearing shall be held by the board. In addition to the notice requirements of Section 2, the applicant shall mail, at its own expense, notice to all owners of land abutting the parcel of land being developed and to abutters to the abutters within 300 feet of the property line of the parcel, as such owners appear on the most recent tax list, and to such other persons as the board shall identify in its sole discretion.

After the hearing, the board shall approve by a vote of the majority of the board's members, or, if such plan does not comply with the law or the rules and regulations of the board, shall modify and approve or shall disapprove such plan. In the event of disapproval, the board shall state in detail wherein the plan does not conform to the rules and regulations of the board. Within less than 15 days of a disapproval, the applicant may resubmit an amended plan, and the board shall revoke its disapproval without prejudice and approve within 60 days of such resubmission a plan, which, as amended, conforms to such rules and regulations or recommendations. The board shall file a certified copy of its action with the town clerk within 15 days of its decision, and it shall send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application. The failure of the board either to take final action regarding a complete plan submitted by an applicant within 60 days after such submission, or such further time extension as may be agreed upon at the written request of the applicant, or to file with the town clerk a certified copy of such action within a further 15 days, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the board with the town clerk.

The board's approval of a plan, or any modification, amendment, or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the town clerk that 20 days have elapsed after the decision has been filed in the office of the town clerk and that no appeal has been filed, or if it is a plan which has been approved by reason of the failure of the board to act thereon within the time prescribed, a copy of the application accompanied by the certification of the town clerk stating the fact that the board failed to act within the time prescribed, and that no appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

## **SECTION 6: WAIVERS**

The board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the law, waive strict compliance with its rules and regulations, upon such conditions as it may reasonably impose.

## **SECTION 7: MODIFICATIONS OF PLANS**

The board may on its own motion, or on the petition of any person interested, have the power to modify, amend or rescind its approval of any plan or to require a change in a plan as a condition of its retaining the status of an approved plan, in accordance with the standards and procedures set forth in Section 5 and subject to all other provisions of the law. No such modification, amendment or rescission of the approval of a plan or change in such plans shall affect lots in such development which have been sold or mortgaged for valuable consideration without the approval of the owner of such lots and the mortgagee in question. The board may identify, in its rules and regulations or as a condition of a plan approval, categories of minor modifications that may be reviewed and approved administratively, without the requirements for notice and public hearing set forth in Section 5. A minor modification shall not affect the vested rights of a plan accruing under Section 11.

## **SECTION 8: CONSOLIDATED REVIEW**

If a development is otherwise subject to review by the board under the special permit or other provisions of the zoning by-law, then the review of the development for the purposes of this law shall be consolidated with such zoning review into a single hearing, and the time periods and other procedures of such zoning review shall govern. However, the board's decision in such zoning review shall incorporate all of its powers of review set forth in this law and the board's rules and regulations.

If the development is located in whole or in part within a local historic district, the applicant shall submit a copy of the plan to the commission, along with such other materials as the commission may require for an application pursuant to its own by-law. If the commission determines within 14 days, in accordance with Section 11 of M.G.L. ch. 40C, that the development involves any features which are subject to its approval, then the review of the development for the purposes of this law shall be consolidated with such historic district review into a single hearing, and the time periods and other procedures of such historic district review shall govern. The commission and the board shall alternate the chair from one hearing to the next. Notwithstanding the consolidated review procedure, nothing in this section shall expand or limit the powers of the board and the commission each to render a decision pursuant to its own rules or bylaw respectively, provided that no decision of approval by the board shall be deemed final until and unless a Certificate of



Appropriateness has been issued by the commission, nor shall anything in this section limit the power of the commission to subsequently review any building or structure, the design of which had not yet been determined as of the time of the consolidated review.

### **SECTION 9: SECURITY**

As a condition of its approval of a plan, the board may require such security as it deems necessary to guarantee the completion of proposed ways and other site improvements and the time within which such improvements shall be completed, which shall not exceed three years from the date of filing approval of the plan with the town clerk or from the date of final judgment in any legal appeal in which the approval is upheld. Such security may include one or all of the following methods: (1) a proper bond; (2) a deposit of money, letter of credit, or negotiable securities; (3) a covenant, executed and duly recorded by the owner of record, running with the land; or (4) an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of funds sufficient in the opinion of the board and otherwise due the applicant, to secure the completion of proposed improvements. All work shall be subject to the approval of the Town Engineer. Such security shall from time to time be reduced or increased by the board so that the amount bonded, deposited or retained continues to reflect the actual expected cost of work remaining to be completed.

Upon the completion of the improvements in accordance with the rules and regulations of the board and the conditions of the board's approval of the plan, and subject to the approval of the Town Engineer, the board shall, upon written request by the applicant, agree to release the security. If the Town Engineer determines that said improvements have not been completed, the board shall so specify in a notice sent by registered mail to the applicant and to the town clerk. Upon failure to issue such agreement or notice within 45 days after the receipt by the board of the applicant's request, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned, and any such covenant or agreement shall become void, and the town clerk shall issue a certificate to such effect, duly acknowledged. Any such security may be applied by the board for the benefit of the town, upon failure, following reasonable notice and opportunity to cure, of the performance for which any such bond or deposit was given to the extent of the reasonable cost to the town of completing such construction and installation.

### **SECTION 10: ENFORCEMENT**

The town's inspector of buildings shall not issue any permit for the erection of a building until first satisfied that the lot on which the building is to be erected is not within a development, or that a way furnishing the access to such lot as required by the law is shown on a duly approved plan, and that any condition of a plan approval limiting the right to erect or maintain buildings on such lot have been

satisfied, or waived by the board.

The Middlesex County superior court and the land court shall have jurisdiction in equity on petition of the board, or of ten taxable inhabitants of the town, to review any action of any municipal board or officer in disregard of the provisions of this section and to annul and enjoin such action, to enjoin the erection of a building in violation of this section, and otherwise to enforce the provisions of the law and any rules or regulations lawfully adopted and conditions on the approval of a plan lawfully imposed thereunder, and may restrain by injunction violations thereof or make such decrees as justice and equity may require. No proceeding under this paragraph shall be instituted more than one year after the act or failure to act upon which such petition is based.

### **SECTION 11: VESTED RIGHTS**

When a plan has been submitted to the board and is subsequently approved under Section 5, any zoning amendment for which the first notice of public hearing was published after the date of the plan's submission shall not apply to the development shown on such plan for a period of three years from the date of filing approval of the plan with the town clerk or from the date of final judgment in any legal appeal in which the approval is upheld.

### **SECTION 12: APPEALS**

Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by any decision of the board concerning a plan, or by the failure of the board to take final action concerning a plan within the required time, may appeal to the Middlesex County superior court or to the land court; provided, that such appeal is entered within 20 days after such decision has been recorded in the office of the town clerk or within 20 days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such town clerk so as to be received within such 20 days. The court shall hear all pertinent evidence and shall annul such decision if found to be unsupported by the evidence or to exceed the authority of the board, or remand the case for further action by the board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

Costs shall not be allowed against the board unless it shall appear that the board acted with gross negligence or in bad faith. The court may require nonmunicipal appellants to post a surety or cash bond in a sum of not less than two thousand nor more than fifteen thousand dollars to secure the payment of any costs incurred by the appellee as a result of the appeal of a decision approving a plan, if it appears to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court. All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.

**SECTION 13: APPLICATION OF LAW; DAMAGES; OTHER POWERS OF BOARD; EFFECTIVE DATE; SEVERABILITY**

**The law shall not abridge the powers of the selectmen, or any other municipal officer, in regard to public ways in any manner except as herein provided, and shall not authorize the taking of land nor authorize the town to lay out or construct any way which may be indicated on any plan until such way has been laid out as a public way in the manner prescribed by law; nor shall action under such law render the town liable for damages. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment or rescission of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan.**

**The board and its officers and agents may, as far as they deem it necessary in carrying out the law, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks.**

**The law shall take effect upon passage. If a court of competent jurisdiction should determine that any provision of this law is invalid, then such decision of invalidity shall not render invalid any other provision.**

**(5-0)**

**COMMENT:** This article re-introduces the subject of Article 16 from the 2008 Annual Town Meeting. Under that article, Town Meeting voted on May 28, 2008 (132-14) to authorize the Board to file home-rule legislation entitled, “An Act Establishing the Arlington Redevelopment Board as the Board of Survey in the Town of Arlington.” That legislation was filed in accordance with Town Meeting’s vote but did not pass during the legislative session. It can be re-filed with the vote of the 2009 Special Town Meeting (Article 8) or the 2009 Annual Town Meeting (Article 25). The Board recommends favorable action on both articles for the same reasons it supported Article 16 in 2008, set forth below:

The intent of this proposed law is to create a fair and efficient system to review the impacts of small-scale residential subdivisions (fewer than 6 units), replacing the current Board of Survey law that was adopted in 1897, but without imposing the complexities and costs of the state subdivision control law, M.G.L. ch. 41, §§ 81K – 81GG (the “SCL”).

The current board of survey law was adopted in 1897, and it has remained essentially unchanged ever since. The law has significant drawbacks. It limits the board’s jurisdiction to the location, direction, width and grade of roadways, so that the board cannot review utilities, drainage, or environmental issues. The burden of review is placed on the Board of Selectmen.

Although the SCL does provide a broader scope of review, it too has drawbacks that make it less than desirable for the town. The SCL contains detailed and



**COMMENT:** The Board favors authorizing the Town to affix liens to real property to compel the payment of the types of charges listed above, where such charges are not timely paid. This process is similar to what is done now for delinquent property taxes and water/sewer charges. Imposing these new liens, called “municipal charges liens,” would be considered only on a case-by-case basis so that extenuating circumstances surrounding the non-payment could be taken into account.

**ARTICLE 27** **HOME RULE LEGISLATION/AFTER SCHOOL SCHOLARSHIP FUND**

**VOTED:** That no action be taken under Article 27 of the Warrant. (5-0)

**COMMENT:** The Board understands that the proponent does not intend to pursue this article.

**ARTICLE 28** **HOME RULE LEGISLATION/RAISE MAXIMUM ALLOWABLE AGE OF POLICE AND FIRE CANDIDATES FOR APPOINTMENT**

**VOTED:** That the Board of Selectmen be and hereby is authorized and requested to file home rule legislation to provide substantially as follows:

**“AN ACT RAISING THE MAXIMUM ALLOWABLE AGE OF CANDIDATES FOR ORIGINAL APPOINTMENT TO THE POSITION OF POLICE OFFICER OR FIREFIGHTER IN THE TOWN OF ARLINGTON.**

**Section 1. Notwithstanding any general or special law to the contrary, including but not limited to Chapter 31 of the General Laws, the Civil Service Law, no person shall be eligible to have his or her name certified for original appointment to the position of police officer or firefighter in the Town of Arlington if such person has reached his or her thirty-sixth birthday.**

**Section 2. This act shall take effect upon passage.”** (5-0)

**COMMENT:** The Board supports this article, submitted by the Town Manager and supported by the Chief of Police and the Fire Chief. By raising the maximum age of police and firefighter candidates to 35, the Board hopes to eliminate or significantly reduce the number of individual petitions that routinely come before Town Meeting seeking waivers of the current maximum age limit of 31. The Board also supports expanding the eligibility pool to facilitate the appointment of the strongest possible candidates that can be expected to succeed in these physically demanding positions.



**ARTICLE 31 HOME RULE LEGISLATION/BARBARA GOODMAN**

**VOTED: That no action be taken under Article 31 of the Warrant. (5-0)**

**COMMENT:** The Board understands that the proponent does not intend to pursue this article.

**ARTICLE 32 ESTABLISH ADVISORY COMMITTEE/  
REORGANIZATION OF TOWN GOVERNMENT**

**VOTED: That the Town Government Reorganization Committee of 2009 be convened to consider and make recommendations to Town Meeting, the Town Manager, and/or the Superintendent of Schools on any advisable reorganization, consolidation, or abolition of Town and/or School departments, boards, committees, or officers and that such committee be comprised of the Town Manager and the Superintendent of Schools or their designees; one member each of the Finance Committee, the School Committee, and the Board of Selectmen; the Town Comptroller; the Town Treasurer; and six citizens to be appointed by a majority of the Board of Selectmen. (5-0)**

**COMMENT:** In the difficult economic times now facing the Town, the Board supports consideration of organizational alternatives to increase efficiency and effectiveness in the delivery of government services and favors a committee composition that includes people both inside and outside town government to better explore a wide range of options with a strong understanding of the demands and limitations on the capacity of municipal and school operations.

**ARTICLE 33 ESTABLISH PAY AS YOU THROW TRASH COLLECTION SYSTEM**

**VOTED: That no action be taken under Article 33 of the Warrant. (5-0)**

**COMMENT:** The Board is recommending no action at this time, but has asked the Town Manager to request that Clarissa Rowe and the Director of Public Works, John Bean, open a project to create a plan for the possible implementation of a PAYT program, involving anyone else they feel would contribute to the effort, and that this PAYT Planning team report back to the Board of Selectmen a year from now, including in their report the full range of options the Board might consider to be ready to present a plan at

Town Meeting in April of 2010 should the Board feel that a PAYT program ought to be considered as part of the next five-year financial stability plan.

**ARTICLE 34**

**REVOLVING FUNDS**

**VOTED:** That the Town does hereby reauthorize the following Revolving Funds:

**Private Way Repair established under Article 46 of the 1992 Annual Town Meeting Expenditures not to exceed \$200,000**

<b>Beginning Balance</b>	<b>\$24,148.31</b>
<b>Receipts</b>	<b>13,248.15</b>
<b>Expenditures</b>	<b>24,091.55</b>
<b>Balance, 7/1/08</b>	<b>\$13,304.91</b>

**Public Way Repair established under Article 45 of the 1992 Annual Town Meeting Expenditures not to exceed \$5,000**

<b>Beginning Balance</b>	<b>\$1,559.21</b>
<b>Receipts</b>	<b>0.00</b>
<b>Expenditures</b>	<b>0.00</b>
<b>Balance, 7/1/08</b>	<b>\$1,559.21</b>

**Fox Library established under Article 49 of the 1996 Annual Town Meeting Expenditures not to exceed \$10,000**

<b>Beginning Balance</b>	<b>\$8,978.48</b>
<b>Receipts</b>	<b>4,424.00</b>
<b>Expenditures</b>	<b>1,055.13</b>
<b>Balance, 7/1/08</b>	<b>\$12,347.35</b>

**Robbins House established under Article 77 of the 1997 Annual Town Meeting Expenditures not to exceed \$55,000**

<b>Beginning Balance</b>	<b>\$4,653.19</b>
<b>Receipts</b>	<b>37,080.00</b>
<b>Expenditures</b>	<b>41,106.03</b>
<b>Balance, 7/1/08</b>	<b>\$ 627.16</b>

**Conservation Commission established under Article 44 of the 1996 Annual Town Meeting -expenditures not to exceed \$10,000**

<b>Beginning Balance</b>	<b>\$2,937.07</b>
<b>Receipts</b>	<b>0.00</b>
<b>Expenditures</b>	<b>90.00</b>
<b>Balance, 7/1/08</b>	<b>\$2,847.07</b>

**Uncle Sam established under Article 31 of the 2000 Annual Town Meeting Expenditures not to exceed \$2,000**

<b>Beginning Balance</b>	<b>\$ 359.48</b>
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Receipts	0.00
Expenditures	0.00
Balance, 7/1/08	\$ 359.48

**Life Support Services established under Article 37 of the 2001 Annual Town Meeting Expenditures not to exceed \$600,000**

Beginning Balance	\$109,742.05
Receipts	322,395.53
Expenditures	168,068.23
Balance, 7/1/08	\$ 264,069.35

**Board of Health Fees established under Article 30 of the 2005 Annual Town Meeting Expenditures not to exceed \$100,000**

Beginning Balance	\$38,161.91
Receipts	85,616.59
Expenditures	84,383.50
Balance, 7/1/08	\$39,395.00

**Field User Fees- Established under Article 78 2004 Annual Town Meeting Expenditures not to exceed \$80,000**

Beginning Balance	\$10,769.50
Receipts	67,657.25
Expenditures	10,351.27
Balance, 7/1/08	\$68,075.48

**Robbins Library Rental – Established under Article 35 2006 Annual Town Meeting Expenditures not to exceed \$8,000**

Beginning Balance	\$1,070.61
Receipts	0.00
Expenditures	253.00
Balance, 7/1/08	\$ 871.61

**Town Hall Rental – Established under Article 35 2006 Annual Town Meeting Expenditures not to exceed \$75,000**

Beginning Balance	\$ 2,275.49
Receipts	28,550.00
Expenditures	25,748.62
Balance, 7/1/08	\$ 5,076.87

**White Goods Recycling – Established under Article 35 2006 Annual Town Meeting Expenditures not to exceed \$80,000**

Beginning Balance	\$47,219.89
Receipts	53,004.55
Expenditures	71,179.38
Balance, 7/1/08	\$29,045.06

**and that no action be taken to create any new Revolving Fund.**

**(5-0)**

**COMMENT:** This is the usual article to receive reports on expenditures and receipts of the various Town revolving funds and to reauthorize such funds in accordance with state law.

**ARTICLE 35                      TRANSFER FUNDS/200<sup>th</sup> ANNIVERSARY COMMITTEE**

**VOTED:**     **That \$1500.00 from the 200<sup>th</sup> Anniversary Account (#2600) be transferred to the Town Celebration Account (#426) to be used for supporting future festivities that commemorate local or national celebrations, that \$1500.00 from the 200<sup>th</sup> Anniversary Account (#2600) be transferred establish a Robbins Library Local History Trust Fund to be used for supporting research, publication, and promotion of the history of the Town of Arlington, and that the remaining balance of the 200<sup>th</sup> Anniversary Account (#2600) revert to the general fund of the Town.**

**(4-0)**

**Ms. Rowe absent**

**COMMENT:** The Board wishes to commend the 200<sup>th</sup> Anniversary Committee for concluding its important work under budget and supports the transfer of a portion of the remaining money to these two funds, which will support the Town by stimulating interest in local history and by commemorating important celebrations.

**ARTICLE 36    ENDORSEMENT OF CDBG APPLICATION**

**VOTED:**     **The Board will report to Town Meeting under Article 36 of the Warrant.**

**(4-0)**

**Ms. Rowe absent**

**ARTICLE 52    LOCAL OPTION TAXES**

**VOTED:**     **That no action be taken under Article 52 of the Warrant.**

**(5-0)**

**COMMENT:** This is the usual article inserted in order to take advantage of any local-option taxes that might become available. Although no such taxes are presently available, some proposals are under active consideration on Beacon Hill, unlike in prior years. The Board strongly supports the acceptance of new revenue sources should the Legislature enact local-option taxes.

**ARTICLE 53**

**APPROPRIATIONS/IMPROVEMENTS/MEAD ROAD**

**VOTED: That no action be taken under Article 53 of the Warrant.**

**(5-0)**

**COMMENT:** The purpose of this article is to implement improvements to Mead Road to address neighborhood concerns about stormwater runoff and traffic and pedestrian safety. The Board is grateful to the proponent for bringing these concerns to its attention and for the efforts he has expended to address them through the proper channels. The Board recommends no action under the article based on its view that, as a general rule, street and sewer improvements are better prioritized through the normal course of municipal operations than through Town Meeting. At the same time, the Board is mindful of the longstanding nature of the problems detailed by the proponent and has requested the Public Works Director, through the Town Manager, to formulate a concrete plan to evaluate options for short-term mitigation and long-term solution and to report that plan to the Board and to the proponent no later than June 30, 2009.

**ARTICLE 67**

**RESOLUTION/SUPPORTING RETURN OF NATIONAL GUARD TO MASSACHUSETTS**

**VOTED: That no action be taken under Article 67 of the Warrant.**

**(3-2)**

**Ms. Rowe and Mr. Greeley voted in the negative.**

**COMMENT:** While the Board appreciates the spirit of the proponent’s message, it views its policy-making authority as local, rather than national, in scope. Because the proposed resolution is concerned with national issues, the Board recommends no action on this article.

**ARTICLE 68**

**RESOLUTION/SUPPORT LEGISLATIVE MUNICIPALLY SPONSORED AUTOMOBILE INSURANCE PROGRAM**

**VOTED: That the Town’s representatives in the General Court be and hereby are requested to support “An Act Establishing a Task Force in the Attorney General’s Office to Study Establishing Municipally Sponsored Automobile Insurance Programs.”**

**(5-0)**

**COMMENT:** The proponent of this article filed the bill referenced above earlier this year in an effort to stimulate consideration of automobile insurance as an alternative source of revenue for municipalities. In these trying economic times, the Board favors exploration of any viable idea that may assist the Town in raising or retaining revenue to support municipal functions. Therefore, the Board recommends favorable action on this article.

**ARTICLE 69**

**INSTRUCTION TO BOARD OF SELECTMEN**

**VOTED: That no action be taken under Article 69 of the Warrant.**

**(5-0)**

**COMMENT:** The Board recommends no action under this article because the “instruction” that the proponent requests would have no legal effect and thus would be outside the power of Town Meeting to issue. The Board is the appointing authority for the Zoning Board of Appeals (“ZBA”) which, under the Zoning Bylaw, is to include one attorney and one registered professional engineer or registered architect. This is a requirement of the Zoning Bylaw, but not of state law. From time to time, vacancies occur on the ZBA (and other boards) and the Board seeks replacement members. It can occur that no one with the precise qualifications required applies for an open position. If so, the Board does its best by appointing someone with the most similar education, training, and experience. It would not be appropriate to allow a dearth of ideally qualified applicants to interfere with timely completion of public business. When the next vacancy on the ZBA occurs, the Board will endeavor to appoint a registered professional engineer or registered architect as set forth in the Zoning Bylaw. The Board is of the opinion, however, that it would not be a proper exercise of Town Meeting’s authority to take any action under this article.



**KEVIN F. GREELEY, CHAIRMAN**  
**DIANE M. MAHON, VICE-CHAIRMAN**  
**JOHN W. HURD**  
**ANNIE LACOURT**  
**CLARISSA ROWE**